

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 11/2013

BETWEEN	NATIONAL COMMERCIAL BANK JAMAICA LIMITED	APPELLANT
AND	INTERNATIONAL ASSET SERVICES LIMITED	RESPONDENT

21 February 2013

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

IN CHAMBERS

BROOKS JA

[1] National Commercial Bank Jamaica Limited (the bank) is dissatisfied with an interlocutory order made by F. Williams J in the Supreme Court on 18 January 2013. The learned judge had refused the bank's application that it be removed as a defendant to a claim instituted by International Asset Services Limited (International). That claim had been filed against the bank and other persons. At the time of his ruling, the learned judge gave the bank permission to appeal.

[2] The bank, however, did not file its notice and grounds of appeal until 4 February 2013, that is, 17 days after the date of the grant of permission. Its attorneys-at-law

filed written submissions along with the notice and grounds, ostensibly in compliance with rule 2.4(1) of the Court of Appeal Rules (CAR).

[3] The Registrar of this court apparently considered the appeal to be a procedural appeal and allowed time for International to file a response. No response having been filed, the matter has come before me, pursuant to rule 2.4(3) of the CAR. Because of the delay in filing, first has to be determined, however, whether any appeal exists.

The analysis

[4] In considering the question of the validity of the appeal, it must first be noted that specific times have been established for filing and serving notices of appeal. Rule 1.11 of the CAR stipulates those times. It states:

- “(1) The notice of appeal must be filed at the registry and served in accordance with rule 1.15 –
 - (a) **in the case of a procedural appeal, within 7 days** of the date the decision appealed against was made;
 - (b) **where permission is required, within 14 days** of the date when such permission was granted.; or
 - (c) in the case of any other appeal within 42 days of the date when the order or judgment appealed against was served on the appellant.
- (2) The court below may extend the times set out in paragraph (1).” (Emphasis supplied)

[5] The second point to be noted is that the issue that the bank wishes to be decided would fall within the definition of a “procedural appeal”, as the term is defined by rule 1.1 of the CAR. This is because the decision of Williams J did not directly decide

the substantive issues in the claim brought by International. Rule 1.1 defines “procedural appeal” to mean:

“...an appeal from a decision of the court below which does not directly decide the substantive issues in a claim...”

[6] The third point to be noted is that this is, undoubtedly, an interlocutory appeal. As a result, according to section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act, no appeal to this court shall lie unless permission has been given either by the judge of the Supreme Court or by this court. A single judge of this court does not have the power to grant that permission. The relevant portion of the section states:

“(1) No appeal shall lie-

(a) – (e)...;

(f) without the leave of the Judge or of **the Court of Appeal** from any interlocutory judgment or an interlocutory order given or made by a Judge except-

....

(2) In this section “Judge” means Judge of the Supreme Court.” (Emphasis supplied)

Section 2 of the Judicature (Appellate Jurisdiction) Act makes a distinction, in the terminology used in its provisions, between the Court of Appeal and a judge of the Court of Appeal.

[7] Based on the provisions of rule 1.11, the bank has clearly filed its notice of appeal out of time. The deadline of seven days for a procedural appeal, having been missed, the notice cannot be said to ground a procedural appeal. Although the bank obtained permission from Williams J to file an appeal, the 14 day limit imposed by rule

1.11(1)(b), was also ignored. The bank's appeal cannot be considered as being one which, by rule 1.11(c) allows 42 days for a filing. Finally, no extension of time has been granted by the Supreme Court and the CAR do not give a single judge of this court the authority to extend the time for filing.

[8] Rule 1.1(8) of the CAR, also draws a distinction between the court, meaning the Court of Appeal, and a single judge of the court. A single judge of the court does not have all the powers of the court. The powers of a single judge are set out, in the main, in rule 2.11. The relevant portion of the rule states:

- "2.11(1) A single judge may make orders –
- (a) – (d)...;
 - (e) **on any other procedural application.**
- (2) Any order made by a single judge may be varied or discharged by the court." (Emphasis supplied)

[9] The matter before me is not a procedural application and therefore its substance does not fall to be considered at all.

[10] In the circumstances, it must be ordered that the appeal has been filed out of time. As a result, no appeal exists.

Order

[11] The appeal has been filed out of time.